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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,520	08/03/2001	Donald Pham	CISCO-4113	8849
28661	7590	12/14/2007	EXAMINER	
SIERRA PATENT GROUP, LTD. 1663 Hwy 395, Suite 201 Minden, NV 89423			DUONG, DUC T	
		ART UNIT	PAPER NUMBER	
		2619		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/922,520	PHAM ET AL.	
Examiner	Art Unit		
Duc T. Duong	2619		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 01 October 2007.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,5-7,11-13,17-21 and 25-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,5-7,11-13,17-21 and 25-30 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date .

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____ .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 7, 13, 19, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claessens et al (US Patent 7,222,255 B1) in view of Zerlan (US Patent 7,010,295 B1).

Regarding to claims 1, 7, 13, and 19, Claessens discloses an apparatus for measuring the performance of a scalable network (fig. 2) comprising means 202 for preparing the network for testing (fig. 2 col. 6 lines 35-37); means 202 for establishing an IP routing path for a session to be tested (fig. 2 col. 9 lines 61-67 and col. 10 lines 1-10); means 212/218/224/232 for sending a constant stream of packets to a client node 214/216/228/230 (fig. 2 col. 5 lines 19-27); and means 214/216/228/230 for counting said received packets (fig. 2 col. 14 lines 45-50); and establishing a peak performance rate as the highest rate with no packet dropout (col. 2 lines 47-62).

Claessens fails to teach for the routing path is a static IP route.

However, Zerlan discloses a method and system for testing various elements in a communications network using static IP route (fig. 5 col. 7 lines 24-27).

Thus, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to arrange for testing of communications network using static IP

route as taught by Zerlan in Claessens's system since such static IP route cost less to implement and offers more enhanced security than dynamic route.

Regarding to claim 29, Claessens discloses the packet generator is configured to perform testing using software (fig. 2 col. 5 lines 27-32).

Regarding to claim 30, Claessens discloses for a test configuration file is download from a TFTP server (col. 5 lines 38-41).

3. Claims 5, 6, 11, 12, 17, 18, 20, 21, and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claessens and Zerlan in view of Beverly, IV (U.S. Patent 6,732,182 B1).

Regarding to claims 5, 6, 11, 12, 17, 18, 20, 21, and 25-28, Claessens and Zerlan disclose all the limitations with respect to claims 1, 7, 13, and 19 except for the constant stream of packets are sent over an OC-3 or OC-12 level networks. However, Beverly discloses a system for generating a packet loss report, wherein test packets are sent over an OC-3 or OC-12 level (col. 4 lines 21-26) via Ethernet pathways 224-228 (fig. 2 col. 6 lines 16-20). Thus, it would have been obvious to a person of ordinary skill in the art to employ a transmission of test packets over OC-3 and OC-12 network via Ethernet pathways as taught by Beverly in Claessens and Zerlan's system for measuring the performance of high speed networks, such as SONET or SDH.

Response to Arguments

4. Applicant's arguments filed October 1, 2007 have been fully considered but they are not persuasive. Regarding to applicant's argument on pages 6-7, Claessens fails to teach for means establishing an IP routing path for a session to be tested. In response,

the examiner would like to direct applicant's attention to fig. 2 col. 11 lines 10-41. Herein, Claessans discloses test packets are sent between an **IP address** of receiver and cable modems to measure network performance. Regarding to applicant's argument on pages 7-8, the paths under testing in Claessans are selected by the system administrator and not by a program storage device as claimed by applicant. In response, the examiner would like to point out that even though Claessans teach the paths for testing are selected by the administrator, there still need some type of device via software or hardware to implement such selections. Furthermore, the claims do not contain the limitation of **selecting** a path by a program storage device as asserted by applicant. Regarding to applicant's argument on page 8, Claessans fails to teach for a continuous stream. In response, the examiner would like to point out applicant only claimed for a constant stream and not continuous stream as asserted by applicant. Regarding to applicant's argument on page 10, applicant requesting proof of motivation for combining Zerlan and Claessans would have been static routes would cost less to implement than dynamic routes. In response, see the following references for such proof:

US Patent 6,701,375 B1 (col. 2 lines 27-32)

US Patent 7,272,643 B1 (col. 11 lines 20-39)

US Patent 6,925,431 B1 (col. 17 lines 27-33)

US Patent 6,633,544 B1 (col. 2 lines 30-37)

Thus, based on the reasons set forth here the previous rejections are maintained.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 571-272-3122. The examiner can normally be reached on M-F (9:00 AM-6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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WING CHAN 12/12/07
SUPERVISORY PATENT EXAMINER